IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 530 of 2002()

OPMV.1217/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT/PETITIONER:

KRISHNAN, S/O.RAMAN, VETTIYADAN HOUSE, MANAKKAL KADAVU P.O., VARANDARAPPILLY, THRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY

RESPONDENTS/RESPONDENTS:
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1. **GOPAL, S/O.KUNJAPPU, KATTUNGAL HOUSE, P.O.VARANDARAPPILLY,THRISSUR DISTRICT.**
2. **JEOTHISH @ JEOTHISH KUMAR,S/O.RAMAN, AKKARAKARAN HOUSE, P.O.VARANDARAPPILLY, THRISSUR DISTRICT.**
3. **THE MANAGER, UNITED INDIA INSURANCE CO.LTD., BRANCH OFFICE,KUNNAMKULAM, P.O.KUNNAMKULAM, THRISSUR DISTRICT.**
4. **SHAMSUDDIN, S/O. ABDU,CHAKKUNGAL HOUSE, VELUPADAM P.O.,THRISSUR DISTRICT.**
5. **ORIENTAL INSURANCE CO.LTD.,BRANCH OFFICE P.O.MELE PATTAMBI,PIN - 679 306.**

R5 BY ADV. SRI.P.V.JYOTHI PRASAD
R3 SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.530 OF 2002 ()

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant suffered serious injuries in a road accident while he was travelling in an autorickshaw and the auto was hit by the jeep on 30.10.1994. He was taken to the West Fort Hospital, Thrissur and he was treated as inpatient from 30.10.1994 to 8.11.1994. He was again hospitalised and he had taken continuous treatment. Ext.A5 wound certificate shows that he suffered following injuries:

"1) Fracture to the tibia and fracture to the zygoma.

2) Subdural haematoma.

3) Fracture to the fibula left leg."

Ext.A6 discharge summary shows that initially he was treated as inpatient from 30.10.1994 to 8.11.1994 for a period of 9

days. Second admission in the hospital was on 9.1.1995. He had inpatient treatment in the hospital for three days. This time he was treated in the Department of Neuro surgery for Chronic Subdural Haematoma with complaints of head ache and altered behaviour. Surgical evacuation was done under local anesthesia and it was found that the patient was recovering. Ext.A7 treatment certificate shows that he was on regular follow up after discharge from the hospital. Neuro Surgeon has issued a disability certificate certifying that the person has neurological problems. Orthopaedic Surgeon has also issued a disability certificate certifying that the person has orthopaedic disability of 15%. As per Ext.A9 certificate it is found that the fracture have united but the patient has residual stiffness on the knee and ankle joints. He is not able to squat and climb. On these reasons 15% disability was assessed by the Doctor. Since the doctors were not examined, tribunal did not accept the above certificate issued by the Orthopaedic Surgeon as well as the Neuro Surgeon. It is the case of the appellant that he filed the application for summoning doctors. But doctors were away on tour. Therefore they did not accept

the summons issued. In any event, tribunal ought have calculated compensation on a multiplier method scientifically. On considering the nature of disability, orthopedic disability as well as the neuro disability, we are of the view that compensation can be awarded for 15% disability. Tribunal fixed Rs.800/- as monthly income. He was an agriculturist. According to him, he was getting Rs.1,800/- per month from agricultural work and also dairy business. It is true that no evidence was produced. He was aged 50 years. In 2nd Schedule even for a minor child or a non-earning person monthly income is fixed as Rs.1,250/- (Rs.15,000/- per year). Appellant is maintaining the family from the agricultural income. Therefore tribunal ought have fixed atleast R.1,500/- as the monthly income. Since he was aged 50 years under the 2nd schedule, apt multiplier is 11. If that be so, compensation payable will be Rs.1,500 x 12 x 11 x $^{15}/_{100}$ = Rs.29,700/-. Tribunal did not award any compensation for disability or earning capacity only because doctors were not examined fully to prove the medical certificate. Even though it was accepted by the tribunal that he has sustained fracture of both bones

and also zygomatic fracture and he had subdural haematoma and he is suffering from headache and he has to follow up treatment. So claimant is entitled to an additional amount of Rs.29,700/- for disability and loss of earning capacity. Tribunal accepted that he was under treatment for about six months and for actual loss of earning Rs.4,800/- was granted taking Rs.800/- as the monthly income. Since we have assessed Rs.1,500/- as the monthly income, he is entitled to Rs.4,200/- as actual loss of earning. It is submitted that for pain and sufferings only Rs.5,000/- is awarded and for loss of amenities, discomforts etc. only Rs.3,200/- was awarded and actual medical bills were reimbursed. Even though he has to undergo subsequent treatment, considering the total amount, we are not enhancing the compensation of other heads. Since it was found by the tribunal that driver of the autorickshaw 2nd respondent was responsible for the accident, 3rd respondent Insurance company is liable to pay the amount and no appeal is filed by the Insurance company. Hence 3rd respondent Insurance company is directed to deposit Rs.33,900/- with 7.5% interest from the date of application till its deposit in addition

to the amount already decreed by the tribunal. On deposit of the amount, appellant is entitled to withdraw the same. With the above directions this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.530 OF 2002 ()

J U D G M E N T

11th October, 2007